IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH,
AT HYDERABAD

THE HONOURABLE SRI JUSTICE S. ANANDA REDDY

WRIT PETITION No. 29400 OF 1995

Date:12.09.2006

BETWEEN:

1. Ambati Mallaiah and others

…. PETITIONERS

And

1. State of Andhra Pradesh through its Secretary, Irrigation Department, at Secretariat, Hyderabad and others.

…. RESPONDENTS

ORAL ORDER:

This writ petition is filed by the petitioners, who are 40 in number, seeking a Writ of Mandamus or any other appropriate writ declaring the action of the respondents in not acquiring the lands, which are liable for submersion, as illegal and without jurisdiction and therefore, sought for a consequential direction for notifying the lands of the petitioners, which is liable for submersion, for acquisition under the provisions of the Land Acquisition Act (for short 'the Act') and to pay compensation.

It is claimed that the petitioners are the owners of the lands, which were on the tank bed of Ganga Devi Cheruvu, and the extents owned by the petitioners ranges from Acs.0.08 gts. to Acs.5.00. The irrigation tank by name Ganga Devi Cheruvu had breeched in the year 1902. But however, subsequently, the breeches were restored. As a result of restoration of the said tank, an extent of Acs.183.10 of patta lands belonging to the petitioners got submerged. Therefore, they have made representations to the respondent authorities for acquiring the land and for payment of compensation. But, since there was no positive action, the petitioners were constrained to approach this Court by filing the present writ petition seeking appropriate direction to the respondents.

In response to the notice, a counter affidavit is filed on

behalf of the respondents by the fourth respondent disputing and denying the allegations. It was admitted that the Ganga Devi Cheruvu was originally breeched in the year 1902. But however, on the representations made by the ayacutdars of the said tank, the breeches were restored and the tank was restored for the use. It was also stated that at the time of restoration of tank there were representations by the ayacutdars that no compensation would be claimed with reference to the alleged submersion, and therefore, basing on the said representations, the tank was restored to its normal position. Further, it was stated that as there was a proposal for raising the full tank level of the tank after conducting necessary survey, the engineering department found that an extent of Acs.36.36 gts were liable for submersion. Therefore, proposals were sent for acquisition and in fact under
Section 4(1) of the Act a notification was also published. But however, it was stated that later, the work of raising full tank level of the tank was not taken up. Therefore, the proceedings issued under the Act were sought to be withdrawn. Accordingly, the proceedings were also sent for approval for withdrawal of the notification. It was further stated that even the Government has approved the said proposal for withdrawal of the notification, though it was not stated as to the actual withdrawal of the notification, in any case, in view of the fact that the tank level was not raised, there was no submersion. Therefore, there is no question of any submersion for which compensation is payable.

At the time of hearing, the learned Government Pleader also contended that in identical circumstances, in the case of **T.**

Seetharama Rao v. Government of A.P. rep. by its Secretary, I & CAD Department, Hyderabad in W.P.No.29072 of 1997 dated 16.11.2005 a learned Single Judge of this Court dismissed the writ petition holding that they are not entitled for compensation. Even on merits also, the learned Government Pleader contended that in view of the fact that there is no possibility of submersion, the petitioners are not entitled for any compensation. The learned Government Pleader also contended that the land of the petitioners was kept fallow from 1954-1955 till 1998. Even on that ground also the petitioners are not entitled for any compensation.

Heard both sides and considered the material on record.

Admittedly, the petitioners are claiming to be the owners of the tank bed land of Ganga Devi Cheruvu and claimed that their lands are submergible and hence their lands are to be acquired by the Government and to pay compensation. This claim is disputed by the Government in their counter. In fact it is stated that in view of the proposal for raising the full tank level an extent of Acs.36.36 guntas was proposed to acquire, but as the work of raising of the bund was not taken up, the said lands were not acquired and the proposals sent were withdrawn. Therefore, there is no case for payment of compensation. In fact, it is also the case of the Government that at the time of restoration of the tank to its normal position, the ayacutdars submitted representations stating that no compensation would be claimed in respect of the said tank either for submersion or otherwise. Basing on the said representations, which were reiterated by the Tahasildar, the authorities have restored the tank. Therefore, the petitioners are not entitled to

make any claim for compensation.

In view of the above material facts, I do not find that there are any merits warranting any orders in favour of the petitioners. Their claim, as stated by the respondents in their counter affidavit, is clearly without any merits.

Accordingly, the Writ Petition is dismissed. No costs.

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(S. ANANDA REDDY, J.)

12th September, 2006
Js.